IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9595 of 2001

with

SPECIAL CIVIL APPLICATION No 507 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANASKANTHA DISTRICT PANCHAYAT

Versus

J J PRAJAPATI

Appearance:

1. Special Civil Application No. 9595 of 2001
   MR HS MUNSHAW for Petitioner No. 1
   MS ROOPAL R PATEL for Respondent No. 1
2. Special Civil Application No. 507 of 2003
   MS ROOPAL R PATEL for Petitioner No. 1
   MR HS MUNSHAW for Respondent No. 1
   MR KP RAVAL for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/08/2004

ORAL JUDGEMENT

1.0. Both these petitions are directed against the order made by the Gujarat Civil Services Tribunal [hereinafter referred to as "the Tribunal], dated 29th August, 2001 in Appeal No. 271 of 1998 whereby, the Tribunal while partly allowing the Appeal quashed and set aside the order passed by the Deputy District Development Officer, Banaskantha dated 3rd August, 1998 and confirmed the order passed by District Development Officer, Banaskantha dated 15th July, 1999 and further imposed a penalty of stoppage of four annual increments without future effect. The Tribunal further directed that while reinstating the respondent-workman, the petitioner panchayat shall take into account the earned leave, half pay leave, leave without pay as well as unauthorized leave and accordingly grant all consequential benefits. Hence, they are heard together and they are now disposed of by this common judgment.

1.1. Special Civil Application No. 9595 of 2001 is filed by the petitioner panchayat i.e. employer of the concerned workman, whereas Special Civil Application 507 of 2003, has been filed by the respondent-workman.

2.0. Mr. Munshaw learned advocate appearing for the petitioner panchayat has challenged the order on the ground that the Tribunal has committed gross misconduct. He submitted that the respondent-workman was appointed as junior clerk on compassionate ground. Thereafter, he was sent on deputation to the Development Commissioner, where he had proceeded on unauthorized leave i.e. from 11th September, 1992 to 5th November, 1992. In view of unauthorized leave, he was called upon by notice dated 16th July, 1993 as to why disciplinary action should not be initiated against him.

2.1. Since the respondent-workman did not remain present, the Development Commissioner by order dated 5th November, 1992 sent back the respondent-workman to his parent department.

2.2. Mr. Munshaw further submitted that the respondent-workman was again sent on deputation to the Gujarat State Economic Development Corporation Ltd., and even there also he had not resumed his duty. In view of that, second show cause notice dated 3rd September, 1993 was issued for unauthorized absenteeism and for not

resuming the duty. In view of the aforesaid irregularities, departmental inquiry was conducted and while accepting the finding of the inquiry officer, the Deputy District Development Officer, imposed penalty of removal from the service.

2.3. Being aggrieved by the order of removal, the respondent-workman preferred appeal before the District Panchayat which was also dismissed. Against the said order, the respondent-workman approached the Tribunal by filing Appeal No. 271 of 1998, whereby the Tribunal after appreciating the material produced before it, partly allowed the appeal with the aforesaid directions. Hence, this petition.

3.0. I have heard the learned advocates for the respective parties and have also gone through the record of the petition. From the record of the petition, especially from the order of the Tribunal, it appears that while substituting the penalty of removal into stoppage of four increments without future effect, the Tribunal has considered the family circumstances of the respondent-workman i.e. since he has lost his father at a very young age, he has to look after his widowed mother and that he was not able to inform the petitioner panchayat before proceeding on leave. In view of that, the Tribunal quashed and set aside the order of removal and substituted a penalty of stoppage of four increments without future effect.

3.1. This petition is under Article 227 of the Constitution of India against the order of the Tribunal whereby, the Tribunal has considered and weighed the evidence on record and this Court will not sit in appeal over the decision of the Tribunal. Therefore, assuming that even if the view taken by the Tribunal is erroneous, this Court cannot substitute its decision.

3.2. Looking to the peculiar facts and circumstances of the case, in my opinion, the view taken by the Tribunal is just and proper. From the record, it appears that due to compelling circumstances, the respondent-workman could not resume his duty and by way of last chance, the Tribunal has substituted the penalty of stoppage of four increments without future effect. Therefore, in my opinion, there is neither jurisdictional error nor any illegality committed by the Tribunal.

4.0. In the result, the petition of the petitioner panchayat i.e. Special Civil Application No.9595 of 2001 is dismissed with a clarification that the

respondent-workman will not be entitled for any backwages & monetary benefits.

4.1. Special Civil Application No. 507 of 2003 is dismissed. However, it is directed that the respondent-workman will be continued in service but without any backwages. It is also made clear that the petitioner panchayat shall after granting his absence, i.e. earned leave, half pay leave and leave without pay, and after adjustments, if there is any benefit to be paid, the same shall be paid to the respondent-workman. The respondent-workman shall report the petitioner panchayat on 31st August, 2004 and will resume his duty on 1st September, 2004. Rule is discharged to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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